

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact: ID No.
Telephone Number:

Refer Reply To:
CC:PSI:B06 – PLR-127513-07
Date:
September 24, 2007

Legend:

Taxpayer	=
Plant	=
Intermediate	=
Parent	=
Purchaser	=
Director	=
Location	=
Commission A	=
Order	=
Commission B	=
State	=
Method	=
Fund	=

Dear :

This letter responds to your request, dated June 11, 2007, for a revised schedule of ruling amounts for the 2004 taxable year, pursuant to § 468A(d)(1) of the Internal Revenue Code. Taxpayer was previously granted a revised schedule of ruling amounts for , as well as other years, on . Because of a substantial

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variation (as defined in § 1.468A-3(i)(1)(ii)(A) of the Income Tax Regulations) in the ruling amount determined under the formula approved originally by letter dated _____, Taxpayer was granted a revised schedule of ruling amounts for years _____ by letter dated _____. Taxpayer later realized that the substantial variation applied to the _____ taxable year as well and requested that the Service grant additional time to request the required revised schedule for that year by letter dated September 13, 2006. This request was granted by the Service by letter dated _____, and this request for a revised schedule for the _____ taxable year followed. Information was submitted pursuant to § 1.468A-3(h)(2).

Taxpayer represents the facts and information relating to its request for a revised schedule of ruling amounts as follows:

Taxpayer is wholly owned by Intermediate, which is wholly owned by Parent. Parent files a consolidated return for the affiliated group which includes Taxpayer, Intermediate, and Parent. Taxpayer has a _____ percent direct ownership interest in the Plant.

The Plant is situated at Location. Plant _____. The estimated base cost for decommissioning Plant is based on an independent study and the proposed method of decommissioning the Plant is Method. Decommissioning operations are expected to begin after _____, also located at Location.

Taxpayer is subject to the regulatory jurisdiction of Commission A (_____ percent) and Commission B (_____ percent). There is no change in the amount to be included in the cost of service as determined by Commission B and those amounts are included here for completeness. In Order, Commission A authorized the annual amount of decommissioning costs of \$ _____ to be included in Taxpayer's cost of service for ratemaking purposes for Plant for the years _____. For _____ and _____ Commission A linked the costs to the amount of electricity generated by the Plant and purchased by Purchaser.

The estimated cost of decommissioning Plant is \$ _____ in _____ dollars, and the total estimated future cost of decommissioning Plant is \$ _____, of which \$ _____ is allocable to the Fund (\$ _____ x Taxpayer's qualifying percentage of _____). The funding period for the Plant extends from _____ through _____ and the level funding limitation period for the Plant extends from _____ through _____. The assumed after-tax rate of return to be earned by the assets of the Fund is _____ percent. The rate of escalation to determine the future cost of decommissioning Plant is _____ percent, compounded annually. The estimated period for which the Fund will be in effect is _____ years (_____ through _____). The estimated useful life of the Plant

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is years (through). Thus, the Taxpayer has calculated its qualifying percentage to be percent.

There are no proceedings pending before either Commission A or B that may result in a change to the amount of decommissioning costs for the Plant to be included in the Taxpayer's cost of service for ratemaking purposes.

Taxpayer, in prior schedules of ruling amounts dated , and , was granted permission to use a formula, pursuant to § 1.468A-3(a)(4), to determine its schedule of ruling amounts. The ruling amount for each year of the period is determined on or before the deemed payment date for the year. Expressed mathematically, the Taxpayer uses the following formula to determine the ruling amount ("Formula"):

$$\{[(a \times c) - (d \times (1 + e)^{(f-g)+1})] \times b\} / \{[(1 + e)^{(f-g)+1} - 1] / e\}$$

Where:

- a = Total estimated cost of decommissioning the plant (in future dollars) as approved by Commission A (\$)
- b = Taxpayer's jurisdictional percentage for Commission A (percent)
- c = Taxpayer's qualifying percentage under § 1.468A-3(d)(4) (percent)
- d = Fair market value of the Fund assets as of the beginning of the current year (\$)
- e = After tax rate of return as approved by Commission A (percent)
- f = Final year of funding period (), and
- g = Current year ().

If the Formula should result in a negative number, the ruling amount will be assumed to be zero.

Using the formula results in the following calculation for :

Section 468A provides that a taxpayer may elect to deduct the amount of payments made to a qualified decommissioning fund. However, former § 468A(b) limits the amount paid into such fund for any taxable year to the lesser of the amount of nuclear decommissioning costs allocable to this fund which is included in the taxpayer's cost of service for ratemaking purposes for the tax year or the ruling amount applicable to this year.

Section 468A(d)(1) provides that no deduction shall be allowed for any payment to the nuclear decommissioning fund unless the taxpayer requests and receives from the Secretary a schedule of ruling amounts. The "ruling amount" for any tax year is defined under § 468A(d)(2) as the amount which the Secretary determines to be necessary to fund that portion of nuclear decommissioning costs which bears the same ratio to the total nuclear decommissioning costs with respect to the nuclear power plant as the period for which the nuclear decommissioning fund is in effect bears to the estimated useful life of the plant. This term is further defined to include the amount necessary to prevent excessive funding of nuclear decommissioning costs or funding of these costs at a rate more rapid than level funding, taking into account such discount rates as the Secretary deems appropriate.

Section 468A(g) provides that a taxpayer shall be deemed to have made a payment to the nuclear decommissioning fund on the last day of a taxable year if the payment is made on account of such taxable year and is made within 22 months after the close of the tax year.

Section 1.468A-1(a) provides that an eligible taxpayer may elect to deduct nuclear decommissioning costs under section 468A of the Code. An "eligible taxpayer," as defined under ' 1.468A-1(b)(1) of the regulations, is a taxpayer that has a "qualifying interest" in, among other things, a direct ownership interest.

Section 1.468A-1(b)(2)(ii) provides that the term "qualifying interest" means a leasehold interest in any portion of a nuclear power plant if: (A) The holder of the leasehold interest is subject to the jurisdiction of a public utility commission with respect to such portion of the nuclear power plant; (B) The holder of the leasehold interest is primarily liable under Federal or State law for decommissioning such portion of the nuclear power plant; and (C) No other person establishes a nuclear decommissioning fund with respect to such portion of the nuclear power plant.

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Section 1.468A-2(b)(1) provides that the maximum amount of cash payments made (or deemed made) to a nuclear decommissioning fund during any tax year shall not exceed the lesser of the cost of service amount applicable to the nuclear decommissioning fund for such tax year; or the ruling amount applicable to the nuclear decommissioning fund for such tax year.

Section 1.468A-3(a)(1) provides that, in general, a schedule of ruling amounts for a nuclear decommissioning fund is a ruling specifying annual payments that, over the tax years remaining in the "funding period" as of the date the schedule first applies, will result in a projected balance of the nuclear decommissioning fund as of the last day of the funding period equal to (and in no event more than) the "amount of decommissioning costs allocable to the fund".

Section 1.468A-3(a)(2) provides that, to the extent consistent with the principles and provisions of this section, each schedule of ruling amounts shall be based on the reasonable assumptions and determinations used by the applicable public utility commission in establishing or approving the amount of decommissioning costs to be included in the cost of service for ratemaking purposes. Under § 1.468A-3(a)(3), the Internal Revenue Service shall provide a schedule of ruling amounts identical to the schedule proposed by the taxpayer, but no such schedule shall be provided by the Service unless the taxpayer's proposed schedule is consistent with the principles and provisions of that section.

Section 1.468A-3(a)(4) provides that the Internal Revenue Service will approve, at the request of the taxpayer, a formula or method for determining a schedule of ruling amounts (rather than a schedule specifying a dollar amount for each taxable year) that is consistent with the principles and provisions of § 468A and the regulations thereunder.

Section 1.468A-3(b)(1) provides that, in general, the amount for any tax year in the level funding limitation period shall not be less than the ruling amount for any earlier tax year. Under § 1.468A-3(b)(2), the level funding limitation period begins on the first day of the first tax year for which a deductible payment is made to the nuclear decommissioning fund and ends on the last day on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes.

Section 1.468A-3(d)(1) provides that the amount of decommissioning costs allocable to a nuclear decommissioning fund is the taxpayer's share of the total estimated cost of decommissioning the nuclear power plant multiplied by the qualifying percentage.

Section 1.468A-3(d)(2) provides that, in general, the total estimated cost of decommissioning a nuclear power plant is the reasonably estimated cost of decommissioning used by the applicable public utility commission in establishing or approving the amount of these costs to be included in cost of service for ratemaking purposes.

Section 1.468A-3(d)(3) provides that a taxpayer's share of the total estimated cost of decommissioning a nuclear power plant equals the total estimated cost of decommissioning such plant multiplied by the taxpayer's qualifying interest in the plant. Under § 1.468A-3(d)(4), the qualifying percentage for any nuclear decommissioning fund is equal to a fraction, the numerator of which is the number of tax years in the estimated period for which the nuclear decommissioning fund is to be in effect and the denominator of which is the number of tax years in the estimated useful life of the applicable plant.

Section 1.468A-3(d)(4)(ii) provides that the estimated period for which a nuclear decommissioning fund is to be in effect begins on the later of (1) the first day of the first taxable year for which a deductible payment is made to the nuclear decommissioning fund (or deemed made); or (2) the first day of the taxable year that includes the date that the nuclear power plant begins commercial operations (as determined by the applicable public utility commission at the time the plant was first included in the taxpayer's rate base); and ends on the last day of the taxable year that includes the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes. According to § 1.468A-3(e)(3), the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes is determined under the ratemaking assumptions used by the applicable public utility commission in establishing or approving rates during the first ratemaking proceeding in which the nuclear power plant was included in the taxpayer's rate base.

Section 1.468A-3(d)(4)(iii) provides that the estimated useful life of a nuclear power plant begins on the first day of the taxable year that includes the date that the plant begins commercial operations (as determined by the applicable public utility commission at the time the plant was first included in the taxpayer's rate base); and ends on the last day of the taxable year that includes the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes. According to § 1.468A-3(e)(3), the estimated date on which the nuclear power plant will no longer be included in the taxpayer's rate base for ratemaking purposes is determined under the ratemaking assumptions used by the applicable public utility commission in establishing or approving rates during the first ratemaking proceeding in which the nuclear power plant was included in the taxpayer's rate base.

Section 1.468A-3(g) provides that the Internal Revenue Service shall not provide a taxpayer with a schedule of ruling amounts for any nuclear decommissioning fund

unless the public utility commission that establishes or approves the rates for electric energy generated by the plant has determined the amount of decommissioning costs to be included in the taxpayer's cost of service for ratemaking purposes and has disclosed the after-tax rate of return and any other assumptions and determinations used in establishing or approving the amount.

Section 1.468A-3(h)(2) enumerates the information required to be contained in a request for a schedule of ruling amounts filed by a taxpayer in order to receive a ruling amount for any taxable year.

Section 1.468A-3(i)(1)(ii) provides that any taxpayer that has obtained a formula or method for determining a schedule of ruling amounts for any taxable year must file a request for a revised schedule on or before the earlier of the deemed payment deadline for the fifth taxable year that begins after its taxable year in which the most recent formula or method was approved, or the deemed payment deadline for the first taxable year that begins after a taxable year in which there is a substantial variation in the ruling amount determined under the most recent formula or method. There is a substantial variation if the ruling amount for the year and the ruling amount for any earlier year since the most recent formula or method was approved differ by more than 50 percent of the smaller amount.

Section 1.468A-3(i)(2) provides that any taxpayer that has previously obtained a schedule of ruling amounts can request a revised schedule of ruling amounts. Such a request must be made in accordance with the rules of § 1.468A-3(h). The Internal Revenue Service shall not provide a revised schedule of ruling amounts applicable to a taxable year in response to a request for a schedule of ruling amounts that is filed after the deemed payment deadline date for such taxable year.

We have examined the representations and information submitted by the Taxpayer in relation to the requirements set forth in § 468A and the regulations thereunder. Based solely upon these representations of the facts, we reach the following conclusions:

1. Taxpayer has a qualifying interest in the Plant and is, therefore, an eligible taxpayer under § 1.468A-1(b)(1) of the regulations.
2. Commission A has determined the amount of decommissioning costs to be included in the Taxpayer's cost of service for ratemaking purposes as required by § 1.468A-3(g) of the regulations.
3. Pursuant to § 1.468A-3(a)(4), we approve a formula for determining the schedule of ruling amounts (rather than a schedule specifying a

dollar amount for each taxable year) that is consistent with the principles and provisions of §468A. The approved formula is the Formula shown and explained previously in this letter ruling.

4. Taxpayer, as owner of the Plant, has calculated its share of the total decommissioning costs under §1.468A-3(d)(3) of the regulations.
5. Taxpayer has determined that, pursuant to § 1.468A-3(d)(4) of the regulations, the qualifying percentage is percent.
6. The maximum amount of cash payments made (or deemed made) to the Fund during any tax year is restricted to the lesser amount of the decommissioning costs applicable to the Fund or the ruling amount applicable to the Fund, as set forth under § 1.468A-(2)(b)(1) of the regulations.
7. Taxpayer, subject to the jurisdiction of two public utility commissions for ratemaking purposes, has calculated its share of the total decommissioning costs, as required by § 1.468A-(3)(f)(2) of the regulations.

Based solely on the determinations above, we conclude that the Taxpayer's proposed schedule of ruling amounts in regard to Commission A satisfies the requirements of § 468A of the Code. Accordingly, the schedule of ruling amounts requested by the Taxpayer under § 468A(d)(1) is approved as follows:

APPROVED SCHEDULE OF RULING AMOUNTS ALLOCABLE TO THE TAXPAYER

YEAR	COMMISSION A	COMMISSION B	TOTAL

Approval of the schedule of ruling amounts is contingent on there being no change in the facts and circumstances, known or assumed, at the time the current ruling is issued.

Except as specifically determined above, no opinion is expressed or implied concerning the Federal income tax consequences of the transaction described above. We note that, as stated in our letter of _____, because the statutory deemed

payment deadline for the tax year has passed, Taxpayer will not be permitted to make any further contributions for the tax year as a result of this revised schedule of ruling amounts.

The approved schedule of ruling amounts is relevant only to those payments made to the Fund. Payments allocable to any funds other than the Fund, cannot qualify for purposes of the deduction under the provisions of § 468A of the Code. Payments made to such Fund can qualify only to the extent that they do not exceed the lesser of the decommissioning costs applicable to such Fund or the ruling amounts applicable to this Fund in the tax year.

This ruling is directed only to the Taxpayer who requested it. Section 6110(k)(3) of the Code provides it may not be used or cited as precedent. In accordance with the power of attorney on file with this office, a copy of this letter is being sent to the Taxpayer's authorized representative. We are also sending a copy of this letter ruling to the Director. Pursuant to § 1.468A-7(a), a copy of this letter must be attached (with the required Election Statement) to the Taxpayer's federal income tax return for each tax year in which the Taxpayer claims a deduction for payments made to the Fund.

Sincerely,

PETER C. FRIEDMAN
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel
Passthroughs and Special Industries

cc: